



MURIEL BOWSER MAYOR

April 26, 2021

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

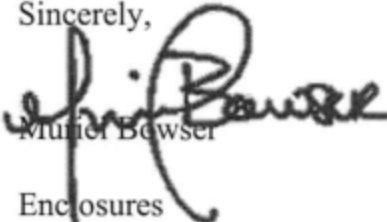
Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the "District of Columbia Financial Services Innovation and Regulatory Sandbox Creation Act of 2021" ("Bill"). The purpose of the Bill is to provide for the creation of a regulatory sandbox program for innovative financial services businesses; and to provide authority for the Commissioner of the Department of Insurance, Securities and Banking ("DISB") to administer and manage the regulatory sandbox program.

A regulatory sandbox can generally be defined as a testing environment where approved entities are permitted to experiment with innovative business models, services, or products with some combination of reduced regulatory burden. In its feasibility report, the District of Columbia Financial Services Regulatory Sandbox and Innovation Council found that the District's market for the delivery of innovative products and services in the financial services sector is robust. The Sandbox Council determined that there is an appetite for the opportunities that a regulatory sandbox can provide.

The Bill provides sufficient opportunity for industry innovation while maintaining strong regulatory oversight through DISB. Approximately 24 months will be provided for innovative product testing, with the Commissioner having discretion to grant an extension for good cause shown. Beyond that, a strong consumer protection infrastructure, including complaint procedures, participant reporting requirements and enforcement authority is included. In this way, the legislation promotes innovation and product speed-to-market to accommodate participants without compromising vital consumer protections.

Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,


Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide for the creation of a regulatory sandbox program for innovative financial services businesses; and to provide authority for the Commissioner of the Department of Insurance, Securities and Banking to administer and manage the regulatory sandbox program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District of Columbia Financial Services Innovation and Regulatory Sandbox Creation Act of 2021”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Commissioner” means the Commissioner of the Department of Insurance, Securities and Banking.

(2) “Consumer”:

(A) Means a District resident or person that purchases or enters a transaction for an innovation that is being tested by a sandbox participant; and

(B) Does not include an agent or business partner of or an investor in a sandbox participant.

(3) “Department” means the Department of Insurance, Securities and Banking.

(4) “Financial product or service” means:

(i) A product or service that is regulated by the Department and requires

33 licensure or a business model, or delivery mechanism that may otherwise be regulated by the
34 Commissioner under title 26 or title 31 of the District of Columbia Official Code, or any other
35 financial product or service approved by the Commissioner; or

36 (ii) A product or service that is related, ancillary or supplementary
37 to the performance or delivery of a product or service defined in subparagraph (i) of this
38 paragraph.

39 (5) "Innovation" means, with respect to providing a financial product or service or
40 a substantial component of a financial product or service, the use or incorporation of new or
41 emerging technology or the reimagination of uses for existing technology to address an issue,
42 provide a benefit or otherwise offer a product, service, business model or delivery mechanism
43 that is not known by the Commissioner to have a comparable widespread offering in the District.

44 (6) "Innovative financial product or service" means a financial product or service
45 that includes an innovation.

46 (7) "Person" includes any natural person, firm, corporation, co-partnership,
47 association, or instrumentality.

48 (8) "Regulatory sandbox" means the program established by this act that allows a
49 person to temporarily test an innovation on a limited basis without otherwise being licensed or
50 authorized to act under the laws of the District.

51 (9) "Sandbox participant" means any person whose application to participate in
52 the regulatory sandbox is approved pursuant to this act.

53 (10) "Sophisticated party" means:

(i) A natural person that has income in excess of \$200,000 per year (or over \$300,000, together with their spouse) or a net worth of more than \$1 million (excluding the value of their home), or

(ii) A firm, corporation, partnership, association or other entity or instrumentality that has total assets of more than \$5 million or at least \$5 million in assets under management.

(11) "Test" means to provide products and services as allowed by this act.

Sec. 3. Regulatory sandbox program establishment

(a) The Commissioner shall establish a regulatory sandbox program to enable a person providing an innovative financial product or service to obtain temporary access to the market in the District to test those innovative financial products or services without meeting all of the regulatory requirements necessary to conduct business in the District.

(b) The Commissioner shall consider the need to ensure consumer protection when determining whether to waive any regulatory requirement for a sandbox participant, and shall be authorized to make such waiver by order.

(c) The Commissioner may enter into agreements with other states, federal agencies, or countries that administer regulatory sandbox programs to allow sandbox participants in those jurisdictions to engage in activities in the District.

Sec. 4. Application process and requirements; fees.

(a) Any person may apply to enter the regulatory sandbox to test an innovation.

(b) A sandbox participant shall not proceed with testing any product, service, or innovation without a license from the Commissioner.

(d) An application shall demonstrate that the applicant:

(1) Is an entity or individual that is subject to the jurisdiction of the Department through incorporation, residency, presence agreement or otherwise; and

(2) Has established a protocol that provides the Commissioner with adequate access to the applicant's records, documents and data to enable the Commissioner to determine the efficacy and safety of the applicant's product or service.

(e) A person applying for entry into the regulatory sandbox shall not be required to apply for or obtain a basic business license from the District's Department of Consumer and Regulatory Affairs to conduct business in the regulatory sandbox.

(f) A person that already possesses a license or other authorization from the Department must file an application with the Commissioner to test an innovative financial product or service within the regulatory sandbox for a product or service outside the scope of its license.

(g) An application shall contain sufficient information to demonstrate that an applicant has an adequate understanding of the innovation, a sufficient plan, and the necessary personnel, financial and technical expertise, and capital to test, monitor and assess the innovation, while ensuring consumers are protected from the activities of the sandbox participant.

(h) An application shall contain the information required by a form that is developed and made publicly available by the Commissioner. The information required by the form may include:

(1) Relevant personal and contact information for the applicant, including full legal names, addresses, telephone numbers, e-mail addresses, website addresses and other information that the Commissioner deems necessary;

(2) Disclosure of any criminal convictions of the applicant or key personnel, if any;

100 (3) A description of the innovation desired to be tested, including statements
101 regarding the following:

102 (A) How an innovation is subject to regulation outside of the regulatory
103 sandbox;

104 (B) How the innovation would benefit consumers, including traditionally
105 underserved consumer populations in the District if applicable;

106 (C) How the innovation is different from other financial products or
107 services available in the District;

108 (D) Potential risks to consumers or persons in the District, and how the
109 participant intends to eliminate or mitigate such risks;

110 (E) How entering the regulatory sandbox would enable a successful test of
111 the innovation;

112 (F) A description of the proposed testing plan, including estimated time
113 periods for market entry, market exit and the pursuit of necessary permanent licensure or
114 authorization;

115 (G) How the applicant will wind down the test and protect consumers if
116 the test fails;

117 (H) How the applicant will employ cybersecurity measures to avoid
118 breaches and protect consumer personal and transaction data; and

119 (I) Any other information the Commissioner deems necessary as set forth
120 by rule.

(i) The Commissioner may collect a non-refundable application fee in an amount to be determined by the Commissioner in a rulemaking. The Commissioner shall deposit any fees collected pursuant to this subsection in the Securities and Banking Trust Fund.

(j) A person may include more than one innovation in its application.

(k) After the application required by subsection (i) of this section is submitted, the Commissioner may seek additional information if the Commissioner deems it necessary. Not later than 30 days after an application is initially submitted, the Commissioner shall notify the applicant as to whether the application is approved for entry into the regulatory sandbox. The Commissioner and an applicant may mutually agree to extend the time period for the Commissioner to determine whether an application is approved for entry into the regulatory sandbox.

(l) The Commissioner has sole authority to make the final decision whether to approve or deny an application for entry into the regulatory sandbox.

(m) A denial of an application is not an appealable agency action for the purposes of the District of Columbia Administrative Procedures Act of 1975, effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-501 *et seq.*).

Sec. 5. Scope.

(a) Innovations tested within the regulatory sandbox are subject to the following restrictions:

(1) The sandbox participant shall have 24 months after the date of approval to complete testing of the innovation described in the sandbox participant's application;

(2) Consumers must be residents of the District;

143 (3) Except as provided in subsection (b) of this section, an innovation may not be
144 tested with more than 25,000 consumers, unless the Commissioner determines the innovation
145 should be limited to fewer consumers;

146 (4) For a sandbox participant testing consumer lender loans, an individual
147 consumer lender loan may be issued for up to \$15,000, except that aggregate loans per consumer
148 may not exceed \$50,000. All consumer lender loans issued in the regulatory sandbox, including
149 loans in excess of \$10,000, are subject to all applicable District and federal law, including the
150 Truth in Lending Act of 1968, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 *et seq.*);

151 (5) For a sandbox participant testing financial products or services as a money
152 transmitter as defined in the Money Transmitters Act of 2000, effective July 18, 2000 (D.C. Law
153 13-140; D.C. Official Code § 26-1001), individual transactions per consumer may not exceed
154 \$2,500 and aggregate transactions per consumer may not exceed \$25,000;

155 (6) Sandbox participants testing a financial product or service subject to Title 26
156 of the District of Columbia Official Code shall comply with all applicable provisions, unless
157 waived by the Commissioner in writing;

158 (7) Sandbox participants testing a securities-related financial product or service
159 subject to the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C.
160 Official Code § 31-5601 *et seq.*) shall comply with all applicable provisions, unless waived by
161 the Commissioner in writing; and

162 (8) Sandbox participants testing an insurance-related financial product or service
163 subject to Title 31 of the District of Columbia Official Code shall comply with all applicable
164 provisions, unless waived by the Commissioner in writing.

(b) A sandbox participant that transacts business with or provides services to one or more sophisticated parties shall be subject to subsection (a)(1) of this section, but shall be exempt from the consumer restrictions and transaction limit amounts set forth in subsections (a) of this section.

(c) This section does not restrict a sandbox participant that holds a license or other authorization in another jurisdiction from acting in that jurisdiction pursuant to and in accordance with that license or other authorization.

(d) A sandbox participant that is approved by the Commissioner that is or will be affiliated with a financial services entity that will provide a financial services product or service in the District shall notify the financial services entity of the requirements of the act.

(f) The Commissioner may, upon request by the applicant, waive the application of District laws that are under the jurisdiction or enforcement authority of the Commissioner with respect to a financial product or service that apply to a sandbox participant. If the Commissioner makes this determination and approves an application for entry into the regulatory sandbox, the Commissioner shall notify the sandbox participant of the specific District laws that will not apply to the sandbox participant. Pursuant to section 11 of this act, the Commissioner shall enforce the District laws applicable to sandbox participants, including the restrictions established by this section, or make an appropriate referral to the Office of the Attorney General or the United States Attorney's Office.

(g) To the extent that a sandbox participant is required by this act to obtain, record, provide or maintain any information, writing, signature, record or disclosure, the sandbox participant may do so in electronic form, or may substitute any substantially similar equivalent information, writing, signature, record or disclosure that is approved by the Commissioner.

Sec. 6. Consumer protection.

(a) A sandbox participant is subject to all applicable District consumer protection laws, including the provisions of Chapter 38 of Title 28 of the D.C. Official Code.

(b) Before marketing an innovation to consumers, a sandbox participant must disclose in writing to consumers the following:

(1) The name and contact information of the sandbox participant, including the license number provided by the Commissioner.

(2) That the innovation is authorized pursuant to the regulatory sandbox and, if applicable, that the sandbox participant does not have a license or other authorization to generally provide financial products or services under District laws that regulate a financial product or service that is outside the regulatory sandbox.

(3) That the District does not endorse or recommend the innovation.

(4) That the innovation is a temporary test that may be discontinued at the end of the testing period, including the expected end date of the testing period.

(5) That consumers may file complaints with the Commissioner regarding the innovation being tested and provide the Department's telephone number and website address where complaints may be filed.

(c) The notifications prescribed by subsection (b) of this section shall be provided to consumers in a clear and conspicuous form. For internet or application-based innovation, consumers must acknowledge receipt of these notifications before completion of a transaction.

(d) The Commissioner shall be required to investigate all consumer complaints and may exercise all of the enforcement powers set forth in the applicable law under which the participant is licensed. The Commissioner also may refer complaints filed regarding products, services, and

innovations being tested pursuant to this act to the Office of the Attorney General or the United States Attorney's Office for civil or criminal enforcement action.

Sec. 7. Exit requirements.

(a) At least 60 days before the end of the 24-month regulatory sandbox testing period, a sandbox participant must either:

(1) Notify the Commissioner that the sandbox participant will exit the regulatory sandbox, wind down its test and cease offering any innovative products or services in the regulatory sandbox prior to the end of the 24-month testing period; or

(2) Seek an extension pursuant to section 9 of this act to pursue a license or other authorization required by law.

(b) If the Commissioner does not receive notification pursuant to subsection (a) of this section, the regulatory sandbox testing period ends at the end of the 24-month testing period and the sandbox participant must immediately cease offering the approved innovative product or service at that time.

(c) If a test includes offering financial products or services that require ongoing duties, such as servicing a loan, the sandbox participant must continue to fulfill those duties or arrange for another person to fulfill those duties after the date the sandbox participant exits the regulatory sandbox.

Sec. 8. Discretionary allowances.

(a) The Commissioner shall grant or deny a sandbox participant's request for an extension of the regulatory sandbox testing period or an increase in the consumer cap established by section 6 of this act for the purpose of pursuing a license or other authorization required by law within 30 days after the request.

(b) A sandbox participant shall make any request pursuant to subsection (a) of this section on a form, and pursuant to guidelines, prescribed by the Commissioner by rule. A request granted under this subsection shall not be effective for more than one year after the approval date.

(c) A sandbox participant that obtains an extension or increase pursuant to subsection (b) of this section shall provide the Commissioner with a written report every 3 months that provides an update on efforts to obtain a license or other authorization, including any submitted applications for licensure or other authorization, rejected applications or issued licenses or other authorization.

(d) A denial made by the Commissioner under subsection (a) of this section is not an appealable agency action for the purposes of the District of Columbia Administrative Procedures Act of 1975, effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-501 et. seq.).

(e) The Commissioner may grant a sandbox participant's request to transact business in currency other than United States dollars. The Commissioner shall adopt rules governing transactions involving alternative currencies to ensure adequate consumer protection.

Sec. 9. Recordkeeping and reporting requirements.

(a) A sandbox participant must retain records, documents and data produced in the ordinary course of business regarding an innovation tested in the regulatory sandbox for at least 3 years after exiting the sandbox.

(b) If an innovation fails before the end of the testing period, the sandbox participant shall notify the Commissioner and report on actions taken to ensure consumers have not been harmed as a result of the innovation's failure.

256 (c) A sandbox participant is subject to all applicable District and federal data security
257 laws and regulations.

258 Sec. 10. Records; disclosures; evidentiary effect.

259 (a) Records that are submitted to the Commissioner that contain proprietary or trade
260 secret information shall not be considered a public record and shall not be made available to the
261 public under the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96;
262 D.C. Official Code § 2 -531 *et seq.*) or any other law.

263 (b) Records and information that are submitted or obtained pursuant to this act may be
264 disclosed by the Commissioner to any of the following:

265 (1) State and federal agencies.

266 (2) Representatives of foreign countries that have regulatory or supervisory
267 authority over the activities of the sandbox participant.

268 (3) A District, federal, state or county grand jury in response to a lawful
269 subpoena.

270 (4) The D.C. Auditor for the purpose of conducting audits authorized by law.

271 (c) The disclosure pursuant to subsection (b) of this section of a complaint or the results
272 of an examination, inquiry or investigation of a sandbox participant does not make that
273 information a public record.

274 (d) This section does not prevent the disclosure of information that is admissible in
275 evidence in a civil or criminal proceeding brought by a District or federal law enforcement
276 agency to enforce or prosecute civil or criminal violations of the law.

277 Sec. 11. Reporting requirements; monitoring; enforcement; agreements.

278 (a) The Commissioner may establish periodic reporting requirements for sandbox
279 participants.

280 (b) The Commissioner may seek records, documents and data from sandbox participants.
281 On the Commissioner's request, sandbox participants shall make such records, documents and
282 data available for inspection by the Commissioner.

283 (c) If the Commissioner has reasonable cause to believe that a sandbox participant has
284 engaged in or is engaging in any practice or transaction that is in violation of this act, that
285 constitutes an unlawful practice, or that constitutes a violation of a District or federal criminal
286 law, the Commissioner may remove a sandbox participant from the regulatory sandbox or order
287 a sandbox participant to exit the regulatory sandbox.

288 (d) The Commissioner may enter into agreements with state, federal or foreign regulators
289 in advancing the purpose of the regulatory sandbox, which may include allowing sandbox
290 participants to operate in other jurisdictions and allowing entities authorized to operate in other
291 jurisdictions to be recognized as sandbox participants in the District.

292 Sec. 12. Rulemaking.

293 The Commissioner may promulgate rules to implement the provisions of this act.

294 Sec. 13. Fiscal impact statement.

295 The Council adopts the fiscal impact statement in the committee report as the fiscal
296 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
297 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

298 Sec. 14. Effective date.

299 This act shall take effect following approval by the Mayor (or in the event of veto by the
300 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as

301 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
302 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
303 Columbia Register.